

Members

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Rep. Ralph Ayres
Rep. Robert Kuzman
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Ron Tabacynski
Jacqueline Rowan



COMMISSION ON COURTS

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MEETING MINUTES¹

Meeting Date: October 5, 2006
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Richard Bray, Chairperson; Rep. Kathy Richardson, Vice-Chairperson; Rep. Ralph Ayres; Rep. Ryan Dvorak; G. Michael Witte; Larry Bye; Chief Justice Randall Shepard.

Members Absent: Sen. David Long; Sen. John Broden; Sen. Timothy Lanane; Rep. Robert Kuzman; Ron Tabacynski; Jacqueline Rowan.

Sen. Richard Bray, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:44 P.M.

The first person to testify was Ollie Schierholz, Hamilton County Court Administrator. Mr. Schierholz stated that Hamilton County was the fastest growing county in Indiana. He said that between 2005 and 2010, the population was expected to grow between 23% and 25%.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Schierholz said the six judges in Hamilton County were currently working about 60 hours per week to keep up with their caseloads. He said the county had one magistrate, who was added in 1995, and two commissioners to assist the judges. He stated that the county needed another magistrate.

Mr. Schierholz continued by stating that the creation of a new magistrate position in Hamilton County was preferred over the creation of a new commissioner position because a magistrate had more powers than a commissioner. He added that the county had the resources to accommodate another magistrate.

In response to questions from Commission members, Mr. Schierholz said the current Hamilton County magistrate supported all the courts, but worked mostly on criminal matters. He added that the magistrate conducts all the initial hearings in criminal cases.

Rep. Kathy Richardson stated she knew Hamilton County was not "high on the priority list" since the county received approval for a new superior court last year. However, she said the population growth in Hamilton County was "incredible" and it was not stopping.

Sen. Bray then said the Commission would not vote on any additional endorsements or recommendations until the final meeting.

The next person to testify was Sen. Thomas Wyss. Sen. Wyss said Judge Ray Kickbush had approached him about the creation of a specialized commercial vehicle court (CVC) to handle Commercial Driver's License (CDL) cases in Indiana.

Sen. Wyss said he thought creating a CVC was a good idea because CDL laws were very technical and the issues very complicated. He also said CDL issues involved public safety in general and many times involved homeland security. He continued by stating a CVC would also help relieve the burden on local courts.

Sen. Wyss said he thought a CVC would be similar to the Worker's Compensation Board. He said he thought the court would have six to ten hearing officers who would travel across the state.

The next person to testify was Major Ed Reuter from the Indiana State Police (ISP). Major Reuter said that, as far as the ISP was concerned, the two most important issues concerning CDL violations were, first, public safety, and, second, protecting the infrastructure of roads.

Major Reuter said the ISP was developing a plan to improve CDL enforcement. He stated one common problem with CDL cases was a lack of consistency concerning enforcement and penalties. Major Reuter then distributed a chart (Handout #1) showing the disparity between the fines levied in several counties for commercial motor vehicle weight violations that had been imposed between January 1, 2006, and April 1, 2006.

Major Reuter concluded by stating that Judge Kickbush had done a good job educating judges and prosecutors around the state about commercial motor vehicle laws, but he said more must be done to improve enforcement in Indiana.

The next person to testify was Judge Ray Kickbush. Judge Kickbush said he had served 20 years as judge of the Porter Circuit Court. He said he was now a Senior Judge and had conducted education programs concerning CDL matters for the last five years. Judge Kickbush said he had helped educate judges and prosecutors on these matters in all 92 counties.

Judge Kickbush said that CDL cases were usually assigned to the newest deputy prosecutors and the newest judges. He stated that, even if these people were educated about CDL laws, the high turnover rates in these positions meant they were constantly being filled by new people who had not received any CDL training.

Judge Kickbush said the current system in Indiana was leading to a breakdown in enforcement of federal motor carrier safety regulations. He said many prosecutors and judges did not know that in CDL cases convictions could not be "masked," diversion programs could not be used, and hardship licenses could not be issued.

Judge Kickbush said that the state must comply with federal CDL laws or the state could lose 5% of its federal highway funds. Judge Kickbush said he felt the best way for the state to comply with these federal laws was the creation of a specialized CVC. He said several other specialized courts exist in Indiana and the CVC would just be another one.

Judge Kickbush then distributed a position paper (Handout #2) concerning CVC operations and procedures. He stated the CVC would have jurisdiction over drivers and trucking companies who violate CDL laws and other applicable state and federal motor carrier laws. He stated CVC cases would be heard by hearing officers appointed by the Governor. He said a chief hearing officer designated by the Governor would be responsible for the administrative operation of the CVC.

Judge Kickbush added that a CVC hearing officer would have the ability to waive a case to a circuit or superior court if necessary. He said that a waiver of a case could only be done if the defendant's CDL was revoked. He said that, after this waiver and revocation, the CDL could not be reinstated unless the CVC agreed with the reinstatement.

Judge Kickbush said that all monetary penalties imposed by the CVC would be deposited in a CVC account. He stated that, after the first year of operation, the CVC would be self-funding using the money in this account.

Judge Kickbush concluded by stating that now was the time for Indiana to do something about enforcing federal motor carrier laws so the state would not risk losing federal money due to noncompliance.

In response to questions from Sen. Bray, Judge Kickbush said he originally wanted the CVC to have some criminal jurisdiction but he realized that would not be possible with his proposed CVC structure. Judge Kickbush said any criminal cases would be waived by the CVC to a trial court. Sen. Bray said he was still concerned about possibly limiting the jurisdiction of prosecutors if the CVC was established as Judge Kickbush proposed.

The next person to testify was Guy Boruff from the Indiana Department of Transportation (INDOT). Mr. Boruff said INDOT was also concerned about enforcing motor carrier laws. He said that an overweight truck or an improperly loaded truck can cause tremendous infrastructure damage and create safety hazards.

Mr. Boruff continued by stating INDOT did not want to waste the taxpayers' money by repairing or replacing roads long before they are scheduled to be repaired or replaced due to damage caused by trucks that are not in compliance with applicable laws. However, he said currently many courts were not even fining trucks for weight violations. He stated that he "whole heartedly" supports the creation of the CVC.

The next person to testify was Kenneth Strickland from the Federal Highway Motor Carrier

Division. He stated his agency's goal was to reduce the number of crashes and fatalities caused by commercial motor vehicles in Indiana.

Mr. Strickland said he thought Indiana needed a CVC because the state currently did not have a compliance program for intrastate carriers, judges and prosecutors had limited knowledge of commercial motor vehicle laws, it would relieve the burden on overloaded courts, it would provide uniformity and fairness, it would improve data gathering concerning safety issues, it could become part of the state strategic highway safety plan to reduce highway fatalities, and a CVC would become a natural conduit for new federal programs and funding.

The next person to testify was Captain Brent Bible of the ISP. Captain Bible stated the ISP issued about 275,000 citations every year. He stated that 85,000 of those citations involved commercial motor vehicles.

The next person to testify was Kenny Cragen, President of the Indiana Motor Truck Association. Mr. Cragen said he supported Sen. Wyss' concept of a CVC because it would create uniformity and fairness in the enforcement of motor carrier laws.

Mr. Cragen continued by saying Ohio had a similar program and the trucking industry, the courts, and the state police were all happy with it. He said he would like for the trucking industry in Indiana to have some input in CVC legislation before it is drafted or passed.

Sen. Wyss then stated he thought the CVC concept had merit. He said he thought that in addition to creating uniformity in enforcement it would also act to deter violations of motor carrier laws. He added that, while he wanted to introduce CVC legislation, he wanted to introduce legislation the Commission supported. He concluded by stating that he agreed with Mr. Cragen that the trucking industry needed to be more involved in the process.

The next person to testify was Judge Jim Kirsch, Chief Judge of the Indiana Court of Appeals. Judge Kirsch stated he wanted to address several issues involving the caseload of the Court of Appeals. Judge Kirsch then distributed a document concerning case filings (Handout #3) to the Commission.

Judge Kirsch said the filing of new cases had increased from 398 in 1972 to a projected total of 2,709 in 2006. He said that meant that currently each judge on the Court of Appeals had to decide more than 10 cases per week and more than two cases per day. He said his best estimate was that each judge on the court has 133 minutes to spend on each case assigned to him or her. He said that last year when he testified before the Commission each judge had 144 minutes per case.

Judge Kirsch said that with the present caseload, the judges were "keeping our heads above water." He said he was more concerned with the future. He said that at current assumed projections, the court will have more than 3,000 cases filed in 2008, 4,000 cases in 2012, and 5,000 cases in 2015.

Judge Kirsch said that this year each judge will write an average of 181 majority opinions and will vote on twice that many cases for a total of 543 cases per judge. He said that, based on the assumed rate of increase, to keep the caseload per judge at the current levels would mean the court would have to add three judges in 2009, three judges in 2011, and three judges in 2013.

Judge Kirsch said that in the near future, the Court of Appeals was going to reach a "critical point." He said there were three strategies to deal with this caseload increase:

expand the court, increase the court staff, or change the way the court does business. Judge Kirsch said some of the changes to the way the court does business could be drastic. He said the court could greatly reduce the number of written opinions it issues so that litigants and trial courts would only get one word decisions--"affirmed" or "reversed."

Judge Kirsch also stated that, compared to the population of and the number of trial courts served in neighboring states, the Indiana Court of Appeals was much smaller than the appellate courts in those states.

In response to questions from Commission members, Judge Kirsch said approximately 60% of the cases the Court of Appeals handled were criminal cases, including petitions for post-conviction relief. He also said establishing a new three judge panel for the court would cost \$2 million per year. He stated he did not want to see a decrease in the number of written opinions the court issued because writing an opinion imposes discipline on the decision making process.

The next person to testify was Monica Hensley, Deputy Prosecuting Attorney for Switzerland County and President of the Switzerland County Bar Association. Ms. Hensley stated that, since the last Commission meeting, the Switzerland County Council and County Commissioners had committed to providing space and other local support for a new circuit court judge in Switzerland County. She said that the data in the Indiana Trial Courts 2005 Weighted Caseload Report also supported the creation of a new circuit court in Switzerland County.

Ms. Hensley stated she felt there were viable solutions available to help the citizens of Switzerland County by giving them a new circuit court without hurting the citizens of other counties in the area.

The next person to testify was Judge James Humphrey of the Dearborn-Ohio Circuit Court. Judge Humphrey said that Switzerland County could not be affected without affecting other counties.

The final person to testify was Timothy Tyler, attorney for the Commission. Mr. Tyler said the Indiana Code provision that establishes the Commission was set to expire on June 30, 2007. He stated the Commission could recommend doing nothing and let the Commission expire or the Commission could recommend repealing or amending the expiration and letting the Commission continue indefinitely or until a date certain.

Sen. Bray then stated the final Commission meeting of 2006 would occur Thursday, October 19, 2006, at 1:30 P.M.

Sen. Bray adjourned the meeting at 3:53 P.M.